In the Supreme Court of the United States

OCTOBER Term, 1974

No. 74-1050

MARVIN A. LICHTIG and SOLOMON BLOCK, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners contend that a writ of mandamus should issue to require the district court to grant their motion for a change of venue in a trial that commenced on January 7, 1975.

Petitioners were the independent auditors of Equity Funding Corporation. Along with twenty co-defendants, they were indicted in the United States District Court for the Central District of California for various offenses allegedly committed in connection with the activities of that corporation that gave rise to the so-called "Equity Funding scandal."[1]

[1]Nineteen of petitioners' co-defendants have now entered pleas of guilty to one or more counts of the indictment.

Petitioners' trial was scheduled to begin on January 7, 1975. On the day before trial was to begin, petitioners brought a motion for change of venue or, in the alternative, for an indefinite continuance, on the ground of allegedly prejudicial pretrial publicity. The motion was denied; the trial commenced as scheduled and is still continuing.

One week after commencement of the trial, petitioners filed a petition for a writ of mandamus or prohibition in the United States Court of Appeals for the Ninth Circuit, requesting that the district court be ordered to terminate the trial proceedings by granting the motion for change of venue or, in the alternative, for an indefinite continuance. The petition was summarily denied (Pet. App.).

The denial of the petition for a writ of mandamus or prohibition was proper. Such writs "are drastic and extraordinary remedies * * * [that] should be resorted to only where appeal is a clearly inadequate remedy." *Ex parte Fahey*, 332 U.S. 258, 259-260. Normal appellate review will remain available if petitioners are in fact convicted at trial. See, *e.g.*, *United States* v. *Phillips*, 433 F.2d 1364 (C.A. 8), certiorari denied, 401 U.S. 917; *Bostick* v. *United States*, 400 F.2d 449 (C.A. 5), certiorari denied, 393 U.S. 1068. Accordingly, the court of appeals correctly rebuffed petitioners' attempt to gain piecemeal review. As the Court said in *Will* v. *United States*, 389 U.S. 90, 96, "[a]ll our jurisprudence is strongly colored by the notion that appellate review should be postponed, except in certain narrowly defined circumstances, until after final judgment has been rendered by the trial court." See, also, *United States Alkali Association* v. *United States*, 325 U.S. 196, 202; *Bankers Life & Casualty Co.* v. *Holland*, 346 U.S. 379, 382-383. Moreover, issuance of an extraordinary writ would be particularly inappropriate here, where, because of petitioners' decision to delay bringing their mo-

tion for change of venue until the day preceding trial, issuance of the writ would necessarily interfere with the conduct of a trial in which petitioners may in fact be acquitted.

Furthermore, the extraordinary relief petitioners request is not available in cases, such as this, where "the most that can be claimed * * * is that [the district judge] may have erred in ruling on matters within his jurisdiction." *Will* v. *United States, supra*, 389 U.S. at 103-104. See, also, *Parr* v. *United States*, 351 U.S. 513, 520.

In any event, petitioners' underlying claim of prejudicial pretrial publicity is insubstantial. We have been informed by the United States Attorney for the Central District of California that the *voir dire* panel sitting for petitioners' trial consists exclusively of individuals who had not, prior to trial, heard anything concerning either petitioners or the Equity Funding Corporation.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

APRIL 1975.